

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Daniel Giansante	Team: Squad #7	CCRB Case #: 201804009	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Wednesday, 04/18/2018 6:24 PM	Location of Incident: West 15th Street between Neptune Avenue and Hart Place	Precinct: 60	18 Mo. SOL 10/18/2019	EO SOL 10/18/2019	
Date/Time CV Reported Thu, 04/19/2018 7:34 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Thu, 04/26/2018 1:37 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Brian Muldowney	20975	953149	060 PCT
2. POM Matthew Finn	19624	950414	060 PCT
3. SGT James Gale	01362	943265	060 PCT

Officer(s)	Allegation	Investigator Recommendation
A.SGT James Gale	Abuse: Sergeant James Gale stopped the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.	
B.POM Matthew Finn	Abuse: Police Officer Matthew Finn stopped the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.	
C.POM Brian Muldowney	Abuse: Police Officer Brian Muldowney stopped the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.	
D.POM Matthew Finn	Abuse: Police Officer Matthew Finn refused to provide his name and shield number to § 87(2)(b)	
E.SGT James Gale	Abuse: Sergeant James Gale frisked § 87(2)(b)	
§ 87(4-b) § 87(2)(g)		
§ 87(4-b) § 87(2)(g)		
§ 87(4-b) § 87(2)(g)		
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§ 87(4-b) § 87(2)(g)		

Case Summary

On April 19, 2018, § 87(2)(b) filed the following complaint by phone with IAB, generating original log number 2018-15016 (BR01). On April 30, 2018, § 87(2)(b) also called the CCRB to file this complaint (BR02).

On April 18, 2018, at approximately 6:24 p.m., § 87(2)(b) was driving on West 15th Street between Neptune Avenue and Hart Place in Brooklyn. His friend and neighbor, § 87(2)(b) was a passenger in the vehicle. Sergeant James Gale, Police Officer Matthew Finn, and Police Officer Brian Muldowney stopped § 87(2)(b)'s vehicle (**Allegations A-C: Abuse of Authority, § 87(2)(g)**). PO Finn refused to provide his shield number to § 87(2)(b) (**Allegation D: Abuse of Authority, § 87(2)(g)**). Sgt. Gale frisked § 87(2)(b) (**Allegation E: Abuse of Authority, § 87(2)(g)**).

§ 87(4-b) § 87(2)(g)

The investigation obtained video footage from three different sources: § 87(2)(b)'s cellphone (BR03; BR04), PO Finn and PO Muldowney's BWCs (BR05; BR06), and a private surveillance camera from the vicinity (BR07).

Findings and Recommendations

- **Allegation (A) Abuse of Authority: Sergeant James Gale stopped the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.**

Allegation (B) Abuse of Authority: Police Officer Matthew Finn stopped the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.

Allegation (C) Abuse of Authority: Police Officer Brian Muldowney stopped the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.

PO Finn was driving the unmarked RMP at the time of the incident, and he recounted driving east behind § 87(2)(b)'s vehicle on Neptune Avenue near the intersection with West 19th Street (BR08). He saw § 87(2)(b)'s vehicle shift from a left-hand turning lane into an eastbound lane without signaling. PO Finn continued following the vehicle, and he saw it turn left onto West 15th Street without signaling.

PO Muldowney was in the backseat, and he also recounted seeing § 87(2)(b) fail to signal while changing lanes in the manner described by PO Finn (BR09). He did not recall seeing § 87(2)(b) commit any other VTL violations.

Sgt. Gale was in the front passenger seat, and he recounted that § 87(2)(b) failed to signal when turning left onto West 15th Street (BR10). However, Sgt. Gale ultimately admitted that he could not recall if he actually saw § 87(2)(b) fail to signal, but he recalled that one of his partners told him that they were stopping § 87(2)(b)'s vehicle because he had failed to signal.

§ 87(2)(b) maintained in his CCRB intake statement, his CCRB phone statement, and his in-person statement that he used his turn signal when he turned left onto West 15th Street (BR02; BR11; BR12). He did not recount that the officers ever told him he had failed to signal while changing lanes, and no testimony was elicited from him regarding whether he committed that specific VTL violation. Similarly, in his phone statement and his in-person statement, § 87(2)(b) specified that he absolutely recalled that § 87(2)(b) had used his turn signal when making the left turn (BR13; BR 14).

SnagIt Clip #3, embedded below, shows PO Finn's initial conversation with § 87(2)(b) during the stop from the perspective of § 87(2)(b) cellphone, which was mounted on his dashboard (BR15):



201804009_20180929_1924_DM.mp4

The clip shows that PO Finn told § 87(2)(b) that he had stopped him for failing to signal while turning left. The investigation did not obtain any video evidence from the scene of the alleged VTL infractions. The officers eventually released § 87(2)(b) without issuing any summonses, and the officers made no memo book entries about the incident, so there are no other contemporaneous records to indicate that § 87(2)(b) committed either VTL violation.

§ 87(2)(g)

§ 87(2)(g)

- **Allegation (D) Abuse of Authority: Police Officer Matthew Finn refused to provide his shield number to § 87(2)(b)**

In his in-person statement, § 87(2)(b) recounted that, when PO Finn first approached his window, he told PO Finn, "I need your information." § 87(2)(b) explained during his CCRB interview that he wanted PO Finn's "card," which he understood would contain PO Finn's name and shield number. PO Finn told § 87(2)(b) something to the effect of, "Alright, you got it," which § 87(2)(b) understood to mean that PO Finn would provide his identifying information. PO Finn walked away with § 87(2)(b)'s paperwork. At the conclusion of the stop, PO Finn came back to the driver's window and returned § 87(2)(b)'s paperwork. PO Finn told § 87(2)(b) to drive safely and reminded him to use his turn signal. § 87(2)(b) told him, "I need your name and badge number." PO Finn acted as if he did not hear § 87(2)(b). § 87(2)(b) yelled out to PO Finn, "You act like you don't hear me!" PO Finn then yelled out a number, which was audible on § 87(2)(b)'s cellphone footage of the incident. § 87(2)(b) estimated that he requested PO Finn's "information" about 3-5 times during the incident, but did not recount any other instances in which he did so.

§ 87(2)(b) similarly recounted that, at the end of the incident, § 87(2)(b) asked PO Finn for his "card," and that PO Finn ignored § 87(2)(b). § 87(2)(b) asked three times and PO Finn ignored him each time. Finally, when § 87(2)(b) pointed out that PO Finn was ignoring him, PO Finn yelled out a number.

PO Finn recounted that § 87(2)(b) "didn't appear too happy" during their initial conversation, because § 87(2)(b) did not make eye contact with him and "just kind of had an attitude." He confirmed, however, that § 87(2)(b) promptly produced his paperwork and did not yell or use profanity. PO Finn initially did not recount that § 87(2)(b) requested any of his identifying information. When directly questioned, PO Finn confirmed that § 87(2)(b) asked for either his name, his shield number, or both during their first conversation. He believed that § 87(2)(b) asked for his shield number at some point during the incident, but he did not think it was during their first conversation. When asked if § 87(2)(b) ever requested his "card," PO Finn said that sounded

somewhat familiar but he could not recall. The investigation did not elicit any testimony from PO Finn as to whether he carried or was familiar with NYPD “contact cards.”

PO Finn admitted that he did not state his shield number, or any identifying information, to § 87(2)(b) during the first conversation. He recounted, “I think I explained that I would give it to him when the car stop’s concluded—when we’re done.” When asked to explain why he did not provide his identifying information at the time that § 87(2)(b) first requested it, PO Finn said, “What happens in the car stop is dictated by me, not him.” He also said, “And plus the way—like I said, his demeanor was very poor. And I didn’t like the way he was, you know, kind of, treating me, in a sense. So, you know what? You’ll get it, and you’ll get it when I’m ready to give to give it to you.”

At the conclusion of the incident, PO Finn returned § 87(2)(b)’s paperwork and told him to use his turn signal. As PO Finn was walking back to his vehicle, § 87(2)(b) asked him, “What’s your shield number?” At that point, PO Finn stated his shield number aloud.

SnagIt Clips #3 and #5, embedded below, show § 87(2)(b) and PO Finn’s first conversation from the respective viewpoints of § 87(2)(b)’s dashboard-mounted cellphone and PO Finn’s BWC (BR15; BR16):



201804009_20180929_1924_DM.mp4



201804009_20180929_1931_DM.mp4

The footage shows that the first conversation lasted approximately 01:10 minutes. PO Finn requested § 87(2)(b)’s paperwork, § 87(2)(b) asked why he had been stopped, PO Finn requested the paperwork again, and § 87(2)(b) asked for the probable cause of the stop while retrieving his documents. As he was handing over his paperwork, § 87(2)(b) asked PO Finn, “You got a card with you?” PO Finn asked, “What?” and § 87(2)(b) explained, “A card, you know. Like, your badge number. Your work card.” PO Finn replied, “Sure.” § 87(2)(b) emphasized, “I need that,” and PO Finn replied, “You got it.” As PO Finn reviewed the paperwork, § 87(2)(b) asked again for the reason for the stop, and PO Finn explained that he had failed to signal.

During the rest of the conversation, PO Finn asked § 87(2)(b) if the vehicle belonged to him, and also asked whether he lived in New York or Pennsylvania. Eventually PO Finn walked away.

SnagIt Clips #4 and #6, embedded below, show § 87(2)(b) and PO Finn’s second conversation, again from their respective viewpoints (BR17; BR18):



201804009_20180929_1927_DM.mp4



201804009_20180929_1933_DM.mp4

The footage shows that the second conversation lasted approximately 20 seconds. PO Finn returned § 87(2)(b)’s paperwork and said, “Alright § 87(2)(b) you’re good to go man. Here’s your stuff back.” PO Finn was still speaking when § 87(2)(b) said, “I still need your information.” PO Finn began telling § 87(2)(b) to remember to use his turn signal, and § 87(2)(b) again asked, “I need a card.” After PO Finn finished talking about the turn signal, § 87(2)(b) said, “Listen man, I go through this all the time. I need your card.” PO Finn simply replied, “Have a good day, man.” PO Finn began walking away, and had made it past the trunk of § 87(2)(b)’s vehicle before § 87(2)(b)

§ 87(2)(b) called out to him, “So you just gonna walk away like you don’t hear me?” PO Finn turned and yelled out, “My shield number’s 19624.” § 87(2)(b) then correctly repeated the number.

SnagIt Clip #2, embedded below, shows the surveillance camera’s broader view of this portion of the incident (BR19):



201804009_20180929_1924_DM.mp4

The footage shows that PO Finn was already standing back at the RMP’s driver’s door and beginning to open it when he turned and yelled out his shield number.

The footage shows that § 87(2)(b) specified once that he wanted PO Finn’s “badge number,” and that he otherwise asked for PO Finn’s “card” or “work card.” He never specifically requested PO Finn’s name, rank, or command.

It is clear from PO Finn’s CCRB testimony, however, that he realized during his first conversation with § 87(2)(b) that § 87(2)(b) wanted him to provide his identifying information. PO Finn chose not to promptly provide the information because he did not like § 87(2)(b)’s demeanor. Contrary to his claim during his CCRB interview, PO Finn did not actually explain to § 87(2)(b) that he would provide his identifying information at the conclusion of the vehicle stop. Nonetheless, PO Finn excused his delay in providing the information by affirming that he intended to identify himself to § 87(2)(b) when the vehicle stop was concluded.

However, as the footage shows, PO Finn blatantly ignored multiple additional requests from § 87(2)(b) during their second conversation, and even walked away from § 87(2)(b)’s vehicle without providing any identifying information at all. It was only once he was more than a car-length away from § 87(2)(b)’s window that PO Finn shouted out his shield number in the direction of § 87(2)(b)’s vehicle, and he apparently only did so in response to a more strident and abrasive response from § 87(2)(b).

Patrol Guide Procedure 203-09 requires that an officer courteously and clearly state his rank, name, shield number, and command, or otherwise provide them, to anyone who requests them. The officer should allow the person ample time to note the information, unless the officer offers to give the person a “contact card.” Similarly, officers are directed to provide a “contact card” upon request. The card should bear the officer’s name, rank, shield, and command (BR20).

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

- **Allegation (E) Abuse of Authority: Sergeant James Gale frisked § 87(2)(b)**

SnagIt Clips #7 and #1, embedded below, show that Sgt. Gale frisked § 87(2)(b) immediately after instructing him to exit the vehicle (BR21; BR22):



201804009_20180929_1936_DM.mp4



201804009_20180929_1910_DM.mp4

Sgt. Gale initially testified during his CCRB interview that he could not recall if he frisked § 87(2)(b). When Sgt. Gale reached the front passenger window of § 87(2)(b)'s vehicle, he recognized § 87(2)(b) due to a previous incident in March 2018. In that incident, § 87(2)(b) § 87(2)(b) Sgt. Gale was involved in stopping § 87(2)(b)'s vehicle. § 87(2)(b) was the front passenger in that incident as well. In his CCRB interview for that prior incident, Sgt. Gale recounted that, at the beginning of the stop, § 87(2)(b) exited the vehicle, turned toward the RMP, and grabbed at the front of his waistband with both hands as if he was holding onto something. Sgt. Gale specified that he could not see § 87(2)(b) waistband itself, as there was an article of clothing atop it. § 87(2)(b) appeared to be grabbing at his waistband through the article of clothing. § 87(2)(b) then sprinted away from the scene of the stop. Sgt. Gale pursued § 87(2)(b) but soon lost sight of him.

At some point after that earlier incident, Sgt. Gale learned § 87(2)(b) name and his criminal history. In his statement regarding the incident April 18, Sgt. Gale claimed that § 87(2)(b) is “known” to the 60th Precinct, that he has been arrested numerous times for robberies, and that he has been in and out of jail. Sgt. Gale also claimed that he learned that § 87(2)(b) had an active bench warrant. At the time of the CCRB interview, Sgt. Gale could not recall any details about the warrant. He could not recall if he personally searched § 87(2)(b) warrant history, or if another officer told him about the warrant.

During the incident on April 18, § 87(2)(b) pulled over promptly. Sgt. Gale did not see § 87(2)(b) or § 87(2)(b) make any motions or movements inside their vehicle as he approached it. Sgt. Gale immediately asked § 87(2)(b) to exit because he did not want § 87(2)(b) to try to flee as he had during the prior incident. Sgt. Gale denied that he had any additional reasons to suspect that § 87(2)(b) was armed at the time, beyond the circumstances of the prior incident and the fact that he knew that § 87(2)(b) had an active warrant.

After he was shown a portion of PO Muldowney’s BWC footage which shows him frisking § 87(2)(b) Sgt. Gale said that it refreshed his recollection with regard to whether he had frisked § 87(2)(b) Sgt. Gale was then asked if he recalled having any additional reasons for suspecting that § 87(2)(b) was armed at the time he frisked him, and Sgt. Gale denied that he had any reasons beyond what he had already stated.

Sgt. Gale explained that, when PO Muldowney ran § 87(2)(b) name on his NYPD cellphone during the incident, he could not find any active warrants. As a result, the officers did not take any enforcement action.

PO Muldowney was also present during the prior incident with § 87(2)(b) and § 87(2)(b) in March 2018, and he also subsequently learned that § 87(2)(b) had an open warrant. PO Muldowney could not recall the exact nature of the warrant, but he knew that it was “minor.” He

thought it was issued because § 87(2)(b) failed to appear for a summons. He knew that it was not a “parole” warrant or a “supreme court” warrant.

§ 87(2)(b) acknowledged in his in-person statement that he was aware during the incident that he had an open warrant. He said that it was issued because he failed to appear in court to address a summons for drinking alcohol in public. On April 27, 2018, other officers from the 60th Precinct Anticrime team arrested § 87(2)(b) on the street because they knew he had an open warrant. That arrest report indicates that it was a Kings County Criminal Court Warrant with docket #§ 87(2)(b) (BR23). The investigation could not obtain any further information regarding the warrant, as it was closed after § 87(2)(b) arrest.

Based upon the available evidence, the investigation concluded that the active warrant § 87(2)(b) had during this incident was not for a charge specifically indicative of either violence or gun possession.

Patrol Guide Procedure 212-11 states that an officer may only frisk someone if he or she reasonably suspects that the person is armed and dangerous (BR24).

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

- § 87(4-b) § 87(2)(g)

§ 87(4-b) § 87(2)(g)

- § 87(4-b) § 87(2)(g)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been a party (BR28). § 87(2)(b)
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- This is the first CCRB complaint in which § 87(2)(b) has been a complainant or victim (BR28).
- Sergeant James Gale has been a member of the NYPD for 11 years and has been a subject in five CCRB complaints and eight allegations, none of which was substantiated. One of those cases (#201804009), comprising two allegations, is still under investigation.
- Police Officer Brian Muldowney has been a member of the NYPD for six years and has been a subject in three CCRB complaints and three allegations, none of which was substantiated. One of those cases (#201803335), comprising two allegations, is still under investigation.

- Mediation, Civil and Criminal Histories**
- § 87(2)(b) declined to mediate this complaint.
 - On September 28, 2018, the undersigned requested a copy of any Notice of Claim filed regarding this incident with the NYC Comptroller’s office. As of the date of this report, no response has been received. The response will be added to the case file upon receipt.
 - [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
 - [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Investigator:	Signature	<u>Inv. Daniel Giansante</u> Print Title & Name	Date
Squad Leader:	Signature	Print Title & Name	Date
Reviewer:	Signature	Print Title & Name	Date